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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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18 PHILIP MORRIS USA INC.

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA

21 PHILIP MORRIS USA INC.,
22
23 Plaintiff,
24
25 v.
26 SILVER VIEW MARKET, *et al.*,
27
28 Defendants.

NO.: C-06-0701 MMC
(terminated December 12, 2006)

**EX PARTE REQUEST TO CLERK
OF THE COURT FOR ORDER
ANNULING BOND AND
EXONERATING SURETY;
[REDACTED] ORDER**

1 Plaintiff Philip Morris USA Inc. ("Philip Morris USA") hereby submits *ex parte* this
 2 request, pursuant to Local Rule 77-2, that the Clerk of the Court issue an order to annul the
 3 bond posted with the Court by Philip Morris USA on February 10, 2006, and exonerate the
 4 surety with regard to such bond.

5 On February 6, 2006, Philip Morris USA filed a Motion for Temporary Restraining
 6 Order and Order to Show Cause re Preliminary Injunction. The TRO was issued by the
 7 Honorable Maxine M. Chesney on February 7, 2006 (a copy is attached hereto as Exhibit
 8 1). In her TRO order, Judge Chesney ordered Philip Morris USA to post a bond or
 9 undertaking with the Clerk of the Court in the amount of \$10,000. Accordingly, Philip
 10 Morris USA posted a surety bond for \$10,000 with the Court on February 10, 2006 (a copy
 11 is attached hereto as Exhibit 2). On February 17, 2006, Judge Chesney converted the TRO
 12 into a Preliminary Injunction, which ordered that the bond posted with the Clerk of the
 13 Court pursuant to the TRO be converted into a bond to provide security for any damages or
 14 loss incurred as a result of the issuance of the Preliminary Injunction (a copy is attached
 15 hereto as Exhibit 3). Philip Morris USA subsequently resolved all claims with all
 16 defendants in this matter, and the Clerk of the Court terminated the case on December 12,
 17 2006.¹

18 Local Rule 77-2 provides that "the Clerk may sign and enter the following orders
 19 without further direction of a Judge: . . . (b) Orders . . . annulling bonds [or] exonerating
 20 sureties." Accordingly, Philip Morris USA hereby requests that the Clerk of the Court issue
 21 an order annulling the bond and exonerating the surety, because the original purpose for
 22 which security was filed has been resolved without any liability having been incurred.
 23 Philip Morris USA also requests that the Clerk relieve it of the burden of notifying

24 ///

25 ¹ Claims against 18 individual defendants were resolved via Consent Judgments and
 26 Permanent Injunctions approved by the Court. *See Philip Morris USA Inc. v. Silver*
 27 *View Market, et al.*, No. C-06-0701, Docket Nos. 62, 63, 64, 65, 66, 67, 69, 72, 76,
 28 77, 80, 83, 84, and 101. Four defendants were dismissed from the action. *See id.* at
 Docket Nos. 37 and 73. One defendant was resolved via Default Judgment. *See id.*
 at 89.

1 terminated parties of the exoneration due to the large number of defendants—all of which
2 have been terminated—and the ministerial nature of this request.

3 DATED: January 12, 2007

Respectfully submitted,

4 HELLER EHRMAN LLP
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7 By /s/ Anna S. McLean

8 Anna S. McLean

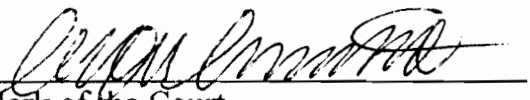
9 Attorneys for Plaintiff
10 PHILIP MORRIS USA INC.
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1 [PROPOSED] ORDER ANNULING BOND AND EXONERATING SURETY

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3 The *Ex Parte* Request by Plaintiff Philip Morris USA Inc. that the Clerk of the Court
4 Annul the Bond filed in this action with regard to the issuance of the Temporary Restraining
5 Order and the Preliminary Injunction and Exonerate the Surety with regard to such bond
6 was presented to the Clerk of this Court, and good cause being shown therefore,

7 **IT IS HEREBY ORDERED THAT**, pursuant to Local Rule 77-2, the Clerk of the
8 Court exonerate the surety bond in the amount of \$10,000, originally posted with the Court
9 by Plaintiff Philip Morris USA Inc. on February 10, 2006, is annulled and the surety with
10 regard thereto is exonerated. No notification to terminated parties is required.

11 DATED: 3/23/07
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16 for the Clerk of the Court
17 United States District Court for the
18 Northern District of California
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